

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DEAN E. PEEPLES,

Plaintiff,

vs.

BENEFICIAL NEVADA, INC., *et al.*,

Defendants.

Case No.: 2:06-cv-01079-RLH-GWF

O R D E R

(Motion to Dismiss-#4
Motion to Amend Complaint- #8)

Before the Court is Defendant Beneficial Nevada Inc.'s **Motion to Dismiss** (#4), filed September 7, 2006. The Court has also considered Plaintiff's Opposition (#5), filed September 25, 2006, and Defendant's Reply (#7), filed October 9, 2006.

Also before the Court is Plaintiff's **Motion to Amend Complaint** (#8), filed October 16, 2006. The Court has also considered Defendant's Response (#9), filed November 1, 2006. The Court will not await a Reply.

DISCUSSION

Pursuant to 15(a) of the Federal Rules of Civil Procedure ("FRCP"), "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served" A motion to dismiss is not a "responsive pleading" within the meaning of FRCP 15(a). *Nolen v. Fitzharris*, 450 F.2d 958 (9th Cir. 1971). Here, Defendant has yet to serve a

1 responsive pleading, and therefore, the Court finds that Plaintiff retains the right to amend his
2 pleading as “ a matter of course” and no leave of the court is necessary. Nonetheless, because
3 Plaintiff has requested leave of the court, Plaintiff’s Motion to Amend is granted.

4 Because Plaintiff’s amended Complaint supersedes the original complaint in its
5 entirety, *See London v. Coopers & Lybrand*, 644 F.2d 811 (9th Cir. 1981), Defendant’s Motion to
6 Dismiss Plaintiff’s original complaint is moot.

7 **CONCLUSION**

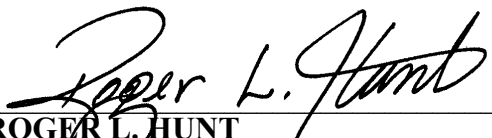
8 Accordingly, and for good cause appearing,

9 IT IS HEREBY ORDERED that Defendant’s Motion to Dismiss (#4) is DENIED
10 without prejudice.

11 IT IS FURTHER ORDERED that Plaintiff’s Motion to Amend Complaint (#8) is
12 GRANTED.

13 The Plaintiff is hereby directed to file and serve his First Amended Complaint.

14
15 Dated: November 2, 2006.

16
17 
18 **ROGER L. HUNT**
19 **United States District Judge**
20
21
22
23
24
25
26